



ARIZONA HOUSE OF REPRESENTATIVES

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House: HHS DP 9-0-0-0 | 3rd Read 59-0-1-0

Senate: HHS DP 8-0-0-0 | 3rd Read 27-0-3-0

HB 2659: organ transplants; disabilities; discrimination; prohibition

Sponsor: Representative Kaiser, LD 15

Transmitted to the Governor

Overview

Requires a health care facility to make reasonable modifications to its policies, practices or procedures to allow individuals with a disability access to organ transplant-related services.

History

An *organ procurement organization* means a person that is designated by the Secretary of the U.S. Department of Health and Human Services as an organ procurement organization ([A.R.S. § 841](#)). Statute allows an anatomical gift to be made during the life of the donor for the purpose of transplantation, therapy, research or education if certain criteria are met ([A.R.S. § 36-843](#)).

When a hospital refers and individual at or near death to an organ procurement organization, the organization must make a reasonable search of the records of any donor registry that it knows exists for the geographical area in which the individual resides to determine if the individual has made an anatomical gift. The organ procurement organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research or education from a donor or prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent ([A.R.S. § 36-852](#)).

Provisions

Organ transplant; Eligibility; Individuals with Disabilities; Prohibitions

1. Precludes a health care provider from doing any of the following solely on the basis of an individual's disability:
 - a) Determining that the individual is ineligible to receive an organ transplant;
 - b) Denying the individual medical or other services related to an organ transplant, including evaluation, surgery, counseling and postoperative treatment;
 - c) Refusing to refer the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would be placed if not for their disability; and
 - d) Declining insurance coverage for the individual. (Sec. 2)
2. Allows a health care provider to consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient determines that the disability is medically significant to the organ transplant. (Sec. 2)
3. Prohibits a health care provider from considering an individual's inability to independently comply with posttransplant medical requirements as medically significant for the purposes of

☐ Prop 105 (45 votes)

☐ Prop 108 (40 votes)

☐ Emergency (40 votes)

☐ Fiscal Note

considering an individual's disability for treatment if the individual has a known disability and the necessary support system to assist the individual in complying with the requirements. (Sec. 2)

4. Requires a health care facility to make reasonable modifications in its policies, practices or procedures as necessary to allow individuals with a disability access to organ transplant-related services, unless the health care facility can demonstrate that the modification would alter the nature of services or impose an undue hardship on them. (Sec. 2)
5. Outlines the types of reasonable modifications a health care facility can include in their policies, practices and procedures. (Sec. 2)
6. Requires a health care facility to make reasonable efforts to comply with the policies, practices or procedures as applicable to allow individuals with a known disability access to organ transplant-related services, unless the health care provider can demonstrate that compliance would alter the nature of services or impose an undue hardship on them. (Sec. 2)
7. Directs a health care provider to make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services, unless the health care provider can demonstrate that providing the transplant-related services with auxiliary aids and services would alter the transplant-related services provided or impose an undue hardship on them. (Sec. 2)
8. Requires a health care provider to comply with the requirements of the [American with Disabilities Act of 1990 \(ADA\)](#) to the extent that act applies to them. (Sec. 2)
9. Stipulates that these provisions to not require a health care provider to comply with the ADA if it does not otherwise require compliance by them. (Sec. 2)
10. States that these provisions apply to each stage of the organ transplant process and related services to an organ transplant, including:
 - a) Evaluation;
 - b) Counseling;
 - c) Treatment, including postoperative treatment and care;
 - d) Providing information; and
 - e) Any other service recommended or required by a physician. (Sec. 2)
11. Stipulates that a health care provider in violation of these provisions is grounds for disciplinary action by the regulatory agency or board that issued their license, certificate or other authority to the provider. (Sec. 2)
12. Specifies that before a regulatory agency or board take disciplinary action against a health care provider for a violation they must:
 - a) Notify the health care provider of the agency's or board's finding of the alleged violation; and
 - b) Provide the health care provider with an opportunity to correct the violation without penalty or reprimand. (Sec. 2)
13. Specifies that a physician who in good faith determines that an individual's disability is medically significant to the organ transplant does not violate these provisions. (Sec. 2)
14. Stipulates that a health care provider who in good faith makes a treatment recommendation or decision on the basis of a physician's determination that an individual's disability is medically significant to the organ transplant does not violate these provisions. (Sec. 2)

Organ transplant; Discrimination; Violation; Civil action

15. Enables an individual that believes a health care provider or health care facility has violated or is violating the aforementioned provisions to commence a civil action for injunctive and other equitable relief against the health care provider or health care facility to enforce compliance. (Sec. 2)
16. Permits the action to be brought in superior court in the county where the affected individual resides, resided or was denied the organ transplant or referral. (Sec. 2)
17. Directs a court to give an action brought priority on its docket and an expedited review. (Sec. 2)
18. Outlines the types of injunctive or equitable relief the court can provide when an action is brought. (Sec. 2)
19. Specifies that these provisions do not limit or replace available remedies under the ADA as amended or any other applicable law. (Sec. 2)
20. Specifies that these provisions do not create a right to compensatory or punitive damages against a health care provider or health care facility. (Sec. 2)
21. Modifies *organ procurement organization* to mean a qualified organ procurement organization under [42 U.S.C. § 273](#) that is currently certified or recertified in accordance with federal law, rather than a person that is designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization. (Sec. 1)
22. Defines the following terms:
 - a) *Auxiliary aids and services*;
 - b) *Disability*;
 - c) *Health care facility*;
 - d) *Health care provider*. (Sec. 1)
23. Makes technical and conforming changes. (Sec. 1, 3)